

DOR ARM activity in 2009-2010 Interim

MAR Notice No. 42-2-856, adoption and amendment of rules relating to property taxes, as found in Chapter 21, Title 42, Administrative Rules of Montana. **Will be adopted 1/18/11**

42.21.158 PROPERTY REPORTING REQUIREMENTS (1) ~~Taxpayers~~ A taxpayer having property in the state of Montana on January 1 of each tax year, must complete the statement as provided in 15-8-301, MCA.

MAR Notice No. 42-2-854, amendment of rules relating to the valuation methods for commercial properties, as found in Chapter 20, Title 42, Administrative Rules of Montana. **Will be adopted 1/18/11**

MAR Notice No. 42-2-853, amendment of rules relating to property taxes and the trend tables for valuing property, as found in Chapter 21, Title 42, Administrative Rules of Montana. **Adopted and effective 12/24/10**

No comments were received at or subsequent to the hearing; however, the department further amends ARM 42.21.[Question: at what point can a department further amend a rule without notice and hearing?]

MAR Notice No. 42-2-849, adoption of rules relating to rental vehicle sales and use tax, as found in Chapter 14, Title 42, Administrative Rules of Montana. **Adopted and effective 11/27/10**
All new rules not implementing legislation.

MAR Notice No. 42-2-848, adoption, amendment, amendment and transfer and repeal of rules relating to lodging facility use taxes and sales taxes, as found in Chapter 14, Title 42, Administrative Rules of Montana. Adopted and effective 11/27/10

Opponents all expressed concern that the department is improperly expanding the tax base, including internet intermediaries, for the lodging facility/lodging facility sales and use tax. Opponents also specifically commented that the proposed rules appear to run counter to legislative policy and should not be adopted.

DOR response:

"The rules do not expand the tax base and/or target internet intermediaries or change their tax responsibilities. The rules explain current practice and alert those entities who have a responsibility to collect and remit the lodging facility/lodging facility sales and use tax to the department.

"The effective date of the rules is the date after publication by the Secretary of State per the Montana Administrative Procedure Act (MAPA). The department believes there is no need for

a separate or different effective date from the MAPA date because these rules describe how the department has administered these two taxes since the implementation of Title 15, Chapter 68, MCA. In implementing the Sales Tax in 2003, the department combined both Chapters 65 and 68 of Title 15, MCA, into one tax return that provided the owner/operator or seller to manage the collection of the tax from the user as one tax, thus simplifying their reporting requirements.

"The department interprets retroactive rules as the changing of a certain practice to periods that have already passed. The rules are not retroactive as the rules describe current and past practice and according to MAPA rules can only apply prospectively without specific statutory authority granting retroactive applicability.

"In response to the question of whether the rules would apply to travel agents or businesses that are not owners or operators of hotel facilities, the new rules would not require any new filings or additional administrative burdens for the travel agencies. The rules do not change the department's established practices with regard to the travel agencies as commonly understood.

"In response to the adoption of the rules, the department believes there is no reason to delay the implementation of the rules as the rules clearly state the entities' responsibilities for collecting and remitting lodging facility sales and use taxes. "

MAR Notice No. 42-2-846, adoption and amendment of rules relating to centrally assessed property, as found in Chapter 22, Title 42, Administrative Rules of Montana. Oral and written testimony was received at the hearing and additional written comments were received prior to December 3, 2010, which was the date set for close of comment. See the "Hearing" section for the department rules to review the full text of the rules. Adopted and effective 12/24/10

(Change of Definitions)

(10) "Goodwill" means booked or accounting goodwill. The booked goodwill must be present on the subject properties' financial statements, and must have been created through the purchase price accounting process as defined by GAAP or other accounting authority.

(10) remains the same but is renumbered (11).

(12) "Intangible personal property" has the following attributes:

(a) Intangible personal property must be separable from the other assets in the unit and capable of being held under separate title or ownership.

(b) Intangible personal property must be able to be bought and sold, separate from the unit of operating assets, without causing harm, destroying, or otherwise impairing the value of the unit of assets being valued through the appraisal process.

(c) Intangible personal property must have value as a result of its ability to create earnings that exceeds their contributory value to the unit; or, it must be capable of earning an income as a standalone entity or apart from the other assets of the unit.

(d) Intangible personal property is not the same as intangible value. Intangible value is the value of an entity as a going concern - its ability to make excess revenues over the normal rate of return. Intangible value is part of the overall value of assets. Intangible value is not exempt from property taxation in Montana.

(11) through (32) remain the same but are renumbered (13) through (34).

REASONABLE NECESSITY: The department is proposing to amend ARM 42.22.101 to add the definition of "goodwill" and "intangible personal property", both key in instructing the taxpayer on what is included in the taxable value and what is not. The department has had numerous requests from taxpayers and taxpayer organizations to provide clarity in this area. These definitions constitute the practice of the department in valuing centrally assessed properties and provide the requested clarity that taxpayers and taxpayer organizations have asked for.

42.22.105 REPORTING REQUIREMENTS (1) Each year all centrally assessed companies shall submit to the department a report of operations, called the centrally assessed annual reporting form, for the preceding year. Railroads, railroad car companies, and pipelines shall submit the report by April 15 and all others by March 31, on forms supplied by the department.

42.22.110 DEDUCTIONS FOR INTANGIBLE PERSONAL PROPERTY

(1) Cost, income, and market indicators of the unit value of centrally assessed properties can generally be expected to include the value of real property, the value of personal property, and in some cases the value of specific intangible personal property. To the extent that each unit valuation indicator includes the value of intangible personal property it shall not be relied upon unless such value of the intangible personal property is excluded or removed.

(2) The department recognizes that the following percentages may not necessarily provide a taxpayer-specific measurement of intangible personal property. However, accurately quantifying the value of intangible personal property is difficult and subject to controversy and litigation which would not clarify the issues for future appraisals. The percentages are a good faith effort to comply with the rulemaking requirements of 15-6-218, MCA, in a manner that is timely and efficient for both the taxpayers and the department.

(SEVERAL ITEMS LISTED IN ORIGINAL DOCUMENT)

(2)(3) If any taxpayer believes that the value of its intangible personal property is greater than that allowed under (1)(2), the taxpayer may propose alternative methodology or information at any time during the appraisal process and the department will give it full and fair consideration. If the department concludes that the value of intangible personal property is greater than that allowed in (1)(2), the unit value will be decreased accordingly. In no event, however, will the value of intangible personal property be less than that allowed in (1)(2).

(3) The department and taxpayers will participate in the review of the percentages in (1)(a), (b) or (c), biennially starting in the year 2000.

(4) In order for intangible personal property to be considered for a deduction higher than the default percentage prescribed in (2), the property must have the characteristics of intangible personal property as defined above.

(5) A taxpayer may, at any time, make recommendations to the department, regarding the percentages in (2)(a), (b), or (c).

MAR Notice No. 42-2-845, adoption of rules relating to telecommunication services for corporation license tax, as found in Chapter 26, Title 42, Administrative Rules of Montana.

MAR Notice No. 42-2-844, adoption and amendment of rules relating to oil and gas taxes, as found in Chapter 25, Title 42, Administrative Rules of Montana. Oral and written testimony was received at the hearing on August 26, 2010. Effective date of the rules: 10/29/10. See the "Hearing" section for the department rules to review the full text of the rules. [was previously noticed as MAR 42-2-842.]

MAR Notice No. 42-2-834, adoption and amendment of rules relating to centrally assessed appraiser certification requirements, as found in Chapter 22, Title 42, Administrative Rules of Montana. Adopted and effective 9/24/10

Montana Taxpayers Association (MTA) opposed utilizing the WSATA-CCAP School as a requirement for unit valuation or centrally assessed appraisers. MTA noted the lack of inclusion of industry in the initial discussion and the department's unwillingness to accept meaningful changes to the text. MTA also stated these courses were not an appropriate use of taxpayer dollars for training department employees' whose job is to find fair market value. MTA suggested they consider an alternative school such as Wichita.

MAR Notice No. 42-2-832, amendment of rules relating to confidentiality of tax records, as found in Chapter 2, Title 42, Administrative Rules of Montana. Adopted and effective 11/27/10

MSCPA has worked extensively with DOR on this rule and the department's actions preceding the rule notice. This rule changes long-standing department practice regarding tax practitioner access to their clients' estimated payments.

MAR Notice No. 42-2-828, adoption of rule relating to value before reappraisal for 2009 agricultural land, as found in Chapter 20, Title 42, Administrative Rules of Montana. Adopted and effective 6/11/10

NEW RULE | CORRECTION OF VALUE BEFORE REAPPRAISAL (VBR)
FOR 2009 AGRICULTURAL LAND (1)

Mr. Dale Hawks, Chester, Montana testified that he does not believe the rule is necessary at this time, due to the fact that there are already administrative rules in place to deal with increases in valuation from prior reappraisal cycles.

Mr. Hawks further stated if the department feels they must move forward with this action, he feels that the rule is incomplete because it only takes into account "productivity-only changes" as it relates to correction of the VBR. He stated that there is a broader picture to consider. If the proposed rule is left as is, it will remove a vast majority of parcels of agricultural land from any meaningful phase-in of their increase in value.

Mr. Hawks stated that if the department continues forward with the position that any "change in use: or "change in size" would require a recalculated VBR for phase-in purposes, the those parcels of land that in reality didn't have either size or use changes, would be removed from any meaningful phase-in of increased valuation.

MAR Notice No. 42-2-827, adoption of rule and amendment of rule relating to individual energy tax credits, as found in Chapter 4, Title 42, Administrative Rules of Montana. **Adopted and effective 6/11/10**

MAR Notice No. 42-2-826, adoption of rule and amendment of rules relating to energy conservation credit, as found in Chapter 4, Title 42, Administrative Rules of Montana. **Adopted and effective 6/11/10**

MAR Notice No. 42-2-824, amendment of rules relating to property tax assessment reviews, as found in Chapter 20, Title 42, Administrative Rules of Montana. **Adopted and effective 5/14/10**

[it is our understanding this changes the department's prior practice of looking at corrections throughout the cycle.]

NEW RULE I EXTENSION OF STATUTORY DEADLINE FOR ASSESSMENT REVIEWS(1) For tax year 2010, the department will accept requests for informal assessment reviews for classes three, four, and ten.

REASONABLE NECESSITY:The department is not required to mail a notice after the first year of a reappraisal cycle as stated in 15-7-102(1)(b), MCA. Tax year 2010 is the second year of the current reappraisal cycle. In the past the department has accepted AB-26 requests for informal reviews annually through the 1st Monday in June. The department has determined, based upon a review of the statutes that govern informal reviews that this practice does not comport with law. However, because the department has received and accepted AB-26 requests for information reviews for tax year 2010, and taxpayers have relied on the department's past practice, the department has determined that it will accept AB-26 requests for informal reviews for tax year 2010 until June 30, 2010.

MAR Notice No. 42-2-817, Telecommunications 9-1-1 Adopted and effective 03/25/10

Rule brought forward by DOR irrespective that HB33, in the 2007 Session, dealing with the same subject did not pass. Initial opposition to the rule, prompted the DOR to attempt negotiated rule making. In the end, despite continued opposition, the rule was adopted.

MAR Notice No. 42-2-815, Agricultural Land Valuation Adopted and effective 02/25/10

MAR Notice No. 42-2-809, Income Tax. Adopted and effective 01/14/10

Adopts New Rule I to clarify the proper treatment of a net operating loss carryover and carryback in regards to shareholders and partners electing to be included in a composite return.

Housekeeping and/or implementing legislation

MAR Notice No. 42-2-857, amendment of rules relating to dependents credits and refunds, as found in Chapter 15, Title 42, Administrative Rules of Montana. [Implements SB 418 from the 2009 Session and housekeeping] **Adopted and effective 12/24/10**

MAR Notice No. 42-2-855, amendment of rules relating to property tax assistance programs for the disabled veterans and elderly homeowners, as found in Chapter 19, Title 42, Administrative Rules of Montana. **Will be adopted 1/18/11**

MAR Notice No. 42-2-852, adoption of rules relating to the functions and operation of the office of taxpayer assistance, as found in Chapter 2, Title 42, Administrative Rules of Montana. **Adopted and effective 11/27/10**

The department is proposing to adopt New Rule II to provide clear and helpful information to taxpayers concerning the purposes of the Taxpayer Assistance Office. The rule outlines the primary functions of this office as it relates to services offered to the taxpayers who do business with the Department of Revenue.

MAR Notice No. 42-2-850, amendment of rule relating to the hospital utilization fee, as found in Chapter 31, Title 42, Administrative Rules of Montana. **Adopted and effective 12/10/10**

MAR Notice No. 42-2-847, amendment of rules relating to Family education savings program, as found in Chapter 15, Title 42, Administrative Rules of Montana. **Adopted and effective 11/27/10**

MAR Notice No. 42-2-841, adoption of rules relating to Insure Montana tax credit, as found in Chapter 4, Title 42, Administrative Rules of Montana. **Adopted and effective 9/24/10**

MAR Notice No. 42-2-840, amendment of rules relating to withholding taxes, as found in Chapter 17, Title 42, Administrative Rules of Montana. **Adopted and effective 9/24/10**

MAR Notice No. 42-2-839, amendment of rules relating to the Montana appraisal manual for residential, commercial, and industrial property, as found in Chapter 18, Title 42, Administrative Rules of Montana. **Adopted and effective 9/24/10**

MAR Notice No. 42-2-838, amendment of rules relating to electronic funds filing and remittance, as found in Chapter 5, Title 42, Administrative Rules of Montana. **Adopted and effective 9/10/10**

MAR Notice No. 42-2-836, adoption of rules relating to the Montana school districts' election to waive protested taxes, as found in Chapter 2, Title 42, Administrative Rules of Montana. **Adopted and effective 9/24/10**

MAR Notice No. 42-2-833, amendment of rules relating to appraisal certification, as found in Chapter 18, Title 42, Administrative Rules of Montana. **Adopted and effective 9/24/10**

MAR Notice No. 42-2-823, amendment of rules relating to individual taxpayer's tax credits, as found in Chapter 4, Title 42, Administrative Rules of Montana. **Adopted and effective 5/14/10**

MAR Notice No. 42-2-822, adoption and amendment of rules relating to tax credits for corporations and individual taxpayers, as found in Chapter 4, Title 42, Administrative Rules of Montana. **Adopted and effective 5/14/10**

MAR Notice No. 42-2-821, amendment of rules relating to tax credits for corporations, as found in Chapter 4, Title 42, Administrative Rules of Montana. **Adopted and effective 5/14/10**

MAR Notice No. 42-2-820, adoption and amendment of rules relating to individual income taxes, as found in Chapter 15, Title 42, Administrative Rules of Montana. **Adopted and effective 4/30/10**

MAR Notice No. 42-2-819, property tax assistance program Correction to previous amendment (12/25/09) that incorrectly provided for inclusion of income that was exclude by the 2009 Legislature when it enacted HB 658. **Adopted and effective 03/01/10**

MAR Notice No. 42-2-818, Withholding Taxes **Adopted and effective 03/01/10**

MAR Notice No. 42-2-816, Property Tax Assistance Program – Tax Exemptions for Disabled Veterans **Adopted and effective 12/24/2009**

MAR Notice No. 42-2-813, Property Taxes – Trend Tables for Valuing Property **Adopted and effective 12/24/2009**

MAR Notice No. 42-2-812, Withholding Taxes. Amends ARM 42.17.101 to update form titles in the rule to match the titles of the forms. The department is striking a reference to a statute in the definition of "sole proprietor" because that statute was repealed.

MAR Notice No. 42-2-811, Coal Severance. Amends ARM 42.25.501 to link commonly used terms defined in the gross proceeds rules and the severance tax rules. Specifically, the changes in definitions 1, 2, 5, and 6 are necessary to bring the rule into conformance with the style of other definitions rules adopted by the department. **Adopted and effective 12/24/2009**

MAR Notice No. 42-2-808, Extended Property Tax Assistance Program (EPTAP).
Amends 42.19.406 to reflect and clarify the direction of the 2009 Legislature relative to the Extended Property Tax Assistance Program (EPTAP) through its passage of HB 658. **Adopted and effective 9/25/09**

MAR Notice No. 42-2-807, Taxable Value of Newly Taxable Property **Adopted and effective 6/11/2009**

MTA does not believe the department needs to wait until the end of the reappraisal cycle to determine initial effect and believe the 2011 taxation committees should request how this actually worked and how the final years of the phase in will be affected.

MAR Notice No. 42-2-806, Senior interest income exclusions. **Adopted and effective 03/16/09**

MAR Notice No. 42-2-805, Biodiesel and bio lubricant tax credit – No Public hearing contemplated. [fixes typographical error] **Adopted and effective 04/06/09**

MAR Notice No. 42-2-803, Property Tax for Privately Owned Landfills **Adopted and effective 05/04/09**

MAR Notice No. 42-2-802, Individual Energy Conservation Installation Credit **Adopted and effective 4/20/09**

MAR Notice No. 42-2-801, Temporary Lodging Credit [Implements HB 240 from 2007 session] **Adopted and effective 1/5/09**

Liquor/Licensing

MAR Notice No. 42-2-858, amendment of rules relating to liquor vendors, as found in Chapter 11, Title 42, Administrative Rules of Montana. Adopted and effective. **Adopted and effective 10/28/10**

MAR Notice No. 42-2-851, adoption and amendment of rules relating to liquor license transfers, suspension, and revocation, as found in Chapter 12, Title 42, Administrative Rules of Montana. **Adopted and effective 10/14/10**

MAR Notice No. 42-2-843, Notice of negotiated rulemaking – agency liquor stores.

MAR Notice No. 42-2-837, adoption and amendment of rules relating to special licenses and permits, as found in Chapter 12, Title 42, Administrative Rules of Montana. **Adopted and effective 9/24/10**

MAR Notice No. 42-2-835, amendment of rules relating to restaurant beer and wine licenses and lottery process, as found in Chapter 12, Title 42, Administrative Rules of Montana. **Adopted and effective 9/24/10**

MAR Notice No. 42-2-825, amendment of rules relating to sale of alcohol to minor and sale to intoxicated persons, as found in Chapter 13, Title 42, Administrative Rules of Montana. **Adopted and effective 09/09/10**

MAR Notice No. 42-2-831, decision on proposed rule action, the department decided to cancel the public hearing on the proposed amendment relating to restaurant beer and wine licenses and lottery process.

MAR Notice No. 42-2-830, decision on proposed rule action, the department decided to cancel the public hearing on the proposed adoption and amendment relating special licenses and permits.

MAR Notice No. 42-2-829, decision on proposed rule action, the department decided to cancel the public hearing on the proposed adoption and amendment relating to liquor license.

MAR Notice No. 42-2-810, Regulations for liquor licensees. **Adopted and effective 03/25/10**

The comments and media coverage regarding the proposed amendments to ARM 42.13.101, which pertained to violations for the sale to a minor, were extensive. Approximately 225 comments in opposition to this proposed amendment were timely filed by opponents. Therefore, based on these comments and further review of the rule, the department will not amend ARM 42.13.101 at this time. Instead, the department is filing MAR Notice 42-2-825, also contained in 2010 Montana Administrative Register, issue no. 6 which schedules a new public hearing to obtain comments and information pertaining to the schedule of penalties charged to liquor licensees as set in ARM 42.13.101 for "sales to minor" and "sale to intoxicated persons" violations which were raised by attendees at the November 2009 hearing.

MAR Notice No. 42-2-804, Small Brewery Closing Time Restrictions **Adopted and effective 06/25/09**

Negotiated Rule Making

MAR Notice No. 843, establishing a negotiated rulemaking committee relating to agency liquor stores, as found in Chapter 11, Title 42, Administrative Rules of Montana. Applications Due: no later than September 27, 2010, establish rulemaking committee no later than October 15, 2010.

[On DOR website as of 01/13/2011]

Upcoming Events and Proposed Rule Changes

Subjects Approved for Development

In addition to the subjects shown below, the department is conducting its biennial review of all department rules. During that review, additional subjects may be identified and will be added to this list as quickly as possible.

- Business and Income Taxes:
 - Abandoned Property
 - Bad Debt Transfers
 - Corporation License Tax
 - Biennial Reviews
 - Recycle Materials
 - Individual Income Taxes - Chapter 15
 - Estates and Trusts
 - Recycle Materials
- Director's Office:
 - General Administration
 - One Stop Licensing
- Property Assessment Division:
 - Biennial Reviews
- Liquor:
 - Chapter 12 - Liquor Licenses - Transfers, Suspension, and Revocation